

16086

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-200862

DATE: February 10, 1981

MATTER OF: S. Livingston & Son, Inc.

**DIGEST:**

*[Complaint that*

Contractor's damages for breach of contract are limited to recovery allowable under Termination for Convenience clause where Government failed to order specified minimum quantity under contract.]

S. Livingston & Son, Inc. [complaints that the National Gallery of Art (Gallery) did not meet its contractual obligation under contract NGA-401 with the firm to supply an estimated quantity of 2,000 shirts during fiscal year 1980.] The contract reserved to the Government the right "to vary the quantities ordered \* \* \* by a plus or minus 20 percent of the quantity listed [2,000]." The contractor asserts that the agency did not order the minimum amount contemplated in the contract.]

The contract in effect called for a [minimum quantity] of 1600 shirts to be ordered by the Government during the life of the contract. This figure [proved to be an overestimation of the needs of the Gallery] and only 408 shirts were ordered. Given the variation in size requirements from year to year the Gallery contends that it could not purchase the additional shirts and stockpile them.

[Included in the contract was a Termination for Convenience clause providing that the contracting officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. The contracting officer did not, however, terminate the contract as he could have.] Nonetheless, [since the Government's lack of any need for these supplies was a justifiable cause for termination, the termination clause

~~015242~~ 114303

operates to limit damages to the termination charges specified in the contract rather than breach of contract damages. Inland Container, Inc. v. United States, 512 F.2d 1073 (Ct. Cl. 1975); Nesbitt v. United States, 345 F.2d 583 (Ct. Cl. 1965).

Accordingly, (the Gallery should settle the matter pursuant to the terms of the Termination for Convenience clause of the contract, and if any amount is found due under that clause, payment should be made to the contractor.) Alternatively, (the matter should be handled under the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. (Supp. III 1979) (if the Gallery determines that the act is applicable.)

*Milton J. Fowler*

For The Comptroller General  
of the United States